



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32370000

Date: AUG. 14, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a producer, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a producer in the entertainment industry whose body of work includes production credits for commercial and social media campaigns as well as television and film projects. She is currently the head of production at an internationally known advertising agency and intends to continue her work for a [REDACTED]-based company that has offered her a position with its branch in [REDACTED]

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined that the Petitioner met one¹ of the criteria she claimed to have satisfied: the display of her work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). The record supports that determination. However, the Director concluded the Petitioner did not establish that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (viii), (ix), or (x). On appeal, the Petitioner asserts that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (v), (vii), (viii), (ix), and (x), and she contends that the Director incorrectly evaluated supporting evidence. Upon review, we conclude that the Petitioner has met the criteria at 8 C.F.R. § 204.5(h)(3)(v), (vii), and (viii).

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted evidence of awards that she has received as part of production teams for numerous advertising campaigns, including [REDACTED] for her work with [REDACTED] as well as [REDACTED] for projects with brands such as [REDACTED] and [REDACTED]. The record includes information from the awards organizations and from objective media sources concerning previous winners and judging criteria, and in denying the petition, the Director generally acknowledged the evidence submitted. However, the Director then concluded,

¹ On appeal, the Petitioner references the Director's discussion of whether she met the criterion at 8 C.F.R. § 204.5(h)(3)(v), which concludes by stating, "As such, the submitted evidence meets this criterion." Based on our review of the decision it appears the Director's concluding sentence erroneously excludes "not"—i.e., it was intended to read, "the submitted evidence does not establish" Because the denial discusses what was requested in the request for evidence and states, "The evidence does not demonstrate the major significance of the [Petitioner's] original contributions," we conclude that the Director made a harmless error which has no negative impact in the adjudication of this appeal. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

without analysis, that “the evidence is insufficient to ascertain that the awards or prizes are nationally recognized or internationally recognized.” The Director did not provide an explanation for concluding that none of the awards were nationally or internationally recognized. On remand, the Director should fully evaluate all evidence related to the Petitioner’s awards when conducting a final merits analysis.

Documentation of the individuals membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner does not dispute the Director’s conclusion regarding this criterion on appeal. Therefore, we deem this issue to be waived, and we will not address this criterion further. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. at 767 n.2.

Evidence of the individual’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

As one example of her original business-related contributions of major significance to the field of advertising, the Petitioner submitted a letter from Turkey’s president of Cinema and Broadcasting Union. The letter describes the exclusion of individuals employed within her field from protections provided to others in the entertainment industry working in television and film and her efforts to address this disparity:

[The Petitioner] is a visionary leader who co-founded and currently serves as Vice-Chairman for [REDACTED]. . . which was recently incorporated into the [REDACTED] thanks to her monumental efforts in pursuit of artists’ rights. Her relentless dedication and tireless work have resulted in the incorporation of the [REDACTED] into the [REDACTED] marking a pivotal milestone in the representation of artistic and technical personnel in commercials, advertisements, and visual marketing in Turkey.

. . .

[The Petitioner], like numerous peers in the advertising industry, endured years of sleepless days, [as well as] weeks and months devoid of overtime pay, expense reimbursement, health insurance, and effective legal recourse. This absurdity stemmed from an equally absurd Turkish law barring advertisers from unionizing based on the classification of the medium in which they work. The archaic legislation failed to evolve alongside technological advancements in media and digital communications, rendering multi-platform and multi-media advertisers unable to seek unionization as value contributors. In essence, [the Petitioner] could seek union rights for her production work in feature films, while the thousands of commercials and advertisements she produced were ineligible for action, despite their comparable significance.

In her unwavering commitment to justice, [the Petitioner] challenges this outdated Turkish law, advocating for the rights of advertisers, and aligning herself with the well-being of those she employs and engages daily. The [] report revealed alarming figures, indicating that 70% of advertisement professionals were forced to leave their positions due to sub-standard working conditions, highlighting the urgency of her mission.

...

Under [the Petitioner's] executive leadership, the [] subsequently initiated comprehensive reports highlighting advertisers' staggering contributions to the struggling Turkish economy. Validated by the government's statistical collations office, advertisers contribute a remarkable \$120 billion annually to Turkey, establishing then as a beacon of extraordinary fiscal wealth amid a declining national economy, uncontrollable inflation rates, and exponential living costs.

...

Furthermore, the platform's reports have focused on comprehensive figures concerning basic pay and employee rights. [The Petitioner's] dedication extends beyond her professional achievements. Her proactive involvement and leadership have empowered countless professionals within the industry. Her commitment to addressing the needs and concerns of workers epitomizes her character and unwavering values.

The record includes articles from objective media sources to corroborate this letter. The Director's denial, however, only generally references the evidence of record as "[d]ocumentation about various projects," "[a]cknowledgments," and "[i]nternet printouts," concluding that the Petitioner did not submit evidence to meet the criterion in a request for evidence, which similarly did not address specific evidence initially submitted. Upon review, given the detailed evidence of the significant impact of the Petitioner's efforts to establish a more equitable working environment within her field, we conclude that the Petitioner has met the requirements of this criterion.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Director's decision that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii) generally acknowledges her submission of "[l]etters of support," "[d]ocumentation about projects" and "[d]ocumentation about companies." The Director claims that the Petitioner has not established that the companies for whom she has performed leading and critical roles are "distinguished as marked by eminence, distinction, or excellence" because the evidence "did not establish that there [sic] awards or achievements which [sic] are indicative of the distinguished reputation of the organization or establishment." We note that the plain language of the criterion does not require that the organization or establishment in question have received any awards. In addition, the submitted evidence includes substantive information concerning the respected reputation of a sizable entity in the advertising industry—[]—for whom the Petitioner has served in leading and critical

roles as head of production for world renown clients. Letters of recommendation detail her contributions to the development of successful ad campaigns and the awards those campaigns garnered. For example, a letter from the chief executive officer at [redacted] provides the following (quoted as written):

[redacted] engaged [redacted] in 2017 prior to its launch in Turkey. Being a relatively new platform entering into a television market rich with stories, depth, and storytelling expertise, [redacted] had significant concerns of penetrating the Turkish market, wherein cultural norms and idiosyncrasies in television series prevailed. [redacted] in other words, needed a local edge for its very first social media and new media campaigns.

[The Petitioner] produced all [redacted] new media and social media campaigns, advertisements, and videos entitled [redacted] which catapulted the previously-unknown [redacted] brand into the talk of the country overnight. These promotional series focused on the art of Ebru, painting on water, wherein Ebru artists painted on water the images of [redacted] most iconic shows such that [redacted] and [redacted]. The videos were posted on [redacted] accounts across platforms and swooped the [redacted] in 2017. [The Petitioner's] project specifically won for Best Social Media Campaign, Most Creative Content Strategy, and Best Digital Series Video. In the [redacted] in 2017, [the Petitioner's] work won for Best Digital Art Direction, best Illustrative Representation, Best Digital Public Relations Campaign, Best Social Media Campaign, Best Branded Film Content, and Best Online Film Content.

This letter includes discussion of several other campaigns that the Petitioner successfully led, including one in which [redacted] engaged the company on a project highlighting imprisoned journalists in Turkey. The letter explains the campaign as follows (quoted as written):

Under the creative direction and leadership of the Petitioner, the campaign, with the hash tag [redacted] was quoted 19,000 times, created over 1.2 million impressions, and reached an audience of 3 million in Turkey. That [the Petitioner's] production was directly viewed by 3% of the entire population of Turkey, and considering the fact that this was a social responsibility campaign, the numbers are beyond staggering however you look at it. [The Petitioner] prepared a produced the campaign in anticipation of 2018 [redacted] to bring alight structural, political, categorical, and punitive issues surrounding press freedom in Turkey, which, to this day, remains a prominent problem towards which [redacted] is devoting significant resources. Turkey is among the most repressive countries in the world when it comes to freedom of the press and indeed boasts, regrettably, the most jailed journalists in the developed and developing world. Through [the Petitioner's] campaign, [redacted] was able to reach a formidable audience in hopes to bring awareness to, and further to cure the oppressive journalistic practices employed by the current political administration in Turkey.

The campaign was so effective in terms of its production values that, among highly respectable others, it won the [redacted] in the Print and Publishing Category at the

[redacted] at the festival's 65th annual edition in [redacted] 2018. Of over 1,440 submissions made in this category alone, [the Petitioner's] campaign, [redacted] was singled out as *the* social responsibility campaign. This brought a level of recognition to [redacted] that was beyond our imagination, and thankfully so.

[The Petitioner's] role in this campaign, as Head of Production, pulverised [redacted] [redacted] efforts on the issue thanks to her artistic and commercial contributions not limited to the curation of the message, use of the script, and various critical production elements. The campaign was pulled from circulation because, individuals who advocated for the free press, and individuals who worked directly on the campaign, began to be arrested and detained on conspiracy charges by the Turkish government. Some journalists who digitally shared [the Petitioner's] campaign and advocated for its message remain in prison, which, again, underscores the impact [the Petitioner] has had on a national political scale.

These represent only two of many examples in the record pertaining to the Petitioner's leading and critical roles for an organization having a distinguished reputation. We conclude that the Petitioner has submitted sufficient evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(viii).

III. CONCLUSION

The Petitioner has met the requisite three of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(v), (vii), and (viii). We therefore need not consider whether she met additional claimed criteria at 8 C.F.R. § 204.5(h)(3)(ix), or (x).

We will withdraw the Director's denial of the petition and remand the matter for further review and entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand. On remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, her status as one of the small percentage at the very top of her field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.